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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,418	06/05/2001	Herbert Benson Scher	RIA 57700	5799

26748 7590 05/04/2009  
SYNGENTA CROP PROTECTION, INC.  
PATENT AND TRADEMARK DEPARTMENT  
410 SWING ROAD  
GREENSBORO, NC 27409

EXAMINER
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FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1618

NOTIFICATION DATE	DELIVERY MODE
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05/04/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/873,418	<b>Applicant(s)</b> SCHER ET AL.	
	<b>Examiner</b> BLESSING M. FUBARA	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28,29,33-39 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) 33,36,38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28, 29, 34, 35, 37 and 41-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Petition to revive the application was granted on 02/02/09.

The examiner acknowledges receipt of request for continued examination under 37 CFR 1.114 and petition to revive the application, both filed 10/30/2007. Claims 30, 31 and 40 are canceled. Claims 28, 34, 43 and 44 are amended. Claims 28, 29, 33-39, and 41-44 are pending. Claims 33, 36, 38 and 39 are withdrawn from consideration.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/2007 has been entered.

**Previous rejections that are not reiterated herein are withdrawn.**

#### **Duplicate Claims**

2. Applicant is advised that should claim 28 be found allowable, claim 44 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 34, 35 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claimed 34 is a process claim but it is unclear what the process steps are.

Claim 35 recites “surface modifying compound” and the boundaries of the “surface modifying compound” is not clear. The boundaries for the protection sought for “surface modifying compound” are not discernible making the scope of the claims unclear and indefinite.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 28, 29, 34, 35, 37 and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Scher et al. (US 4,956,129).

8. Scher discloses porous shell microcapsule that has encapsulated within a substantially water insoluble material (abstract; column 2, lines 26-28), the microcapsule is made from in situ condensation and curing of methylol etherified urea formaldehyde prepolymers in the presence

Art Unit: 1618

of solvents, catalysts such as salicylic acid, benzoic acid and p-toluene sulfonic acid and wall modifying agents react with the methylol groups of the prepolymer (column 8, lines 29-56). The p-toluene sulfonic acid and the tetrakis mercapto compound meet compounds (ID) and (IA) respectively of claims 28, 35, 43 and 44. The compounds encapsulated in the capsules are herbicides, insecticides, fungicides, defoliants and insect repellents (column 3, line 38 to column 5, line 67) meeting claims 41 and 42. The encapsulated pesticides or fungicides are contemplated for application to the soil (column 6, line 30; column 9, line 62; column 1, lines 45-49; column 3, lines 21-24) so that the application to soil step of claim 43 is met. The carboxylate of the mercapto compound and the sulfonate of the toluene sulfonic acid meet claim 29; the process of Scher meet claims 34, 35, 37 and specifically the composition of Scher is an emulsion (see the abstract). The microcapsule encapsulating the core liquids meet the capsules of claims 28, 44 and 29.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLESSING M. FUBARA whose telephone number is (571)272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Blessing M. Fubara/  
Examiner, Art Unit 1618